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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

CITY OF HOLLYWOOD FIREFIGHTERS'
PENSION FUND, Individually and on Behalf
of All Others Similarly Situated,

Plaintiff,

vs.

ATLASSIAN CORPORATION,
ATLASSIAN CORPORATION PLC,
MICHAEL CANNON-BROOKES, SCOTT
FARQUHAR, ANU BHARADWAJ, and
CAMERON DEATSCH,

Defendants.

CASE NO. 3:23-cv-00519-WHO

**DEFENDANTS' NOTICE OF MOTION
AND MOTION TO DISMISS AMENDED
CLASS ACTION COMPLAINT FOR
VIOLATIONS OF THE FEDERAL
SECURITIES LAWS; MEMORANDUM OF
POINTS AND AUTHORITIES**

Date: January 10, 2024
Time: 2:00 p.m.
Courtroom: 2, 17th Floor
Judge: Hon. William H. Orrick III

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on January 10, 2024, at 2:00 p.m., or as soon thereafter as
3 the Court's schedule allows, in Courtroom 2 of the United States District Court for the Northern
4 District of California, located at 450 Golden Gate Avenue, Seventeenth Floor, San Francisco,
5 California 94102, Defendants Atlassian Corporation and Atlassian Corporation Plc (together,
6 "Atlassian"), Michael Cannon-Brookes, Scott Farquhar, Anu Bharadwaj, and Cameron Deatsch
7 (collectively, with Atlassian, "Defendants") will and hereby do move to dismiss the Amended
8 Class Action Complaint for Violations of the Federal Securities Laws (Dkt. No. 40, the
9 "Amended Complaint") filed by Lead Plaintiffs City of Hollywood Firefighters' Pension Fund
10 and Oklahoma Firefighters Pension and Retirement System (together "Plaintiffs").

11 This Motion is made pursuant to Federal Rules of Civil Procedure 9(b) and 12(b)(6) and
12 the Private Securities Litigation Reform Act of 1995 (“PSLRA”), 15 U.S.C. §§ 78u-4 *et seq.*, on
13 the grounds that Plaintiffs fail to state a claim on which relief can be granted.

14 Defendants' Motion is based on this Notice of Motion and Motion to Dismiss, the
15 following Memorandum of Points and Authorities, the Request for Judicial Notice and
16 Incorporation by Reference and Declaration of Colleen C. Smith filed concurrently herewith, all
17 files and records in this action, and anything else as may be considered by the Court. Through
18 this Motion, Defendants seek an order dismissing the Amended Complaint for failure to state a
19 claim.

ISSUES TO BE DECIDED

21 Whether the Amended Complaint fails to state a claim under Section 10(b) and Section
22 20(a) of the Securities Exchange Act of 1934 (“Exchange Act”).

23 | Dated: September 8, 2023

Respectfully submitted,

LATHAM & WATKINS LLP

By: /s/ Michele D. Johnson
Michele D. Johnson

Attorneys for Defendants

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GLOSSARY

| <u>Term</u> | <u>Definition</u> |
|-----------------------------|--|
| Annual Report | Atlassian's annual report on Form 20-F for the fiscal year ended June 30, 2022, filed with the SEC on August 19, 2022 |
| Amended Complaint | Amended Class Action Complaint (Dkt. No. 40) |
| ¶ | Refers to the paragraphs of the Amended Complaint |
| Atlassian or the Company | Atlassian Corporation (and where applicable, Atlassian Corporation Plc) |
| CEO | Chief Executive Officer |
| COO | Chief Operating Officer |
| CRO | Chief Revenue Officer |
| CW | Confidential Witness |
| Defendants | Atlassian Corporation, Atlassian Corporation Plc, Michael Cannon-Brookes, Scott Farquhar, Anu Bharadwaj, and Cameron Deatsch |
| Ex. | Exhibits attached to the Declaration of Colleen C. Smith, filed concurrently herewith |
| FY 2022 | Fiscal year 2022 (July 1, 2021 – June 30, 2022) |
| FY 2023 | Fiscal year 2023 (July 1, 2022 – June 30, 2023) |
| GAAP | United States Generally Accepted Accounting Principles |
| Individual Defendants | Michael Cannon-Brookes, Scott Farquhar, Anu Bharadwaj, and Cameron Deatsch |
| Plaintiffs | Lead Plaintiffs City of Hollywood Firefighters' Pension Fund and Oklahoma Firefighters Pension and Retirement System |
| First quarter, Q1 or Q1 23 | First quarter of fiscal year 2023 (July 1, 2022 – September 30, 2022) |
| Fourth quarter, Q4 or Q4 22 | Fourth quarter of fiscal year 2022 (April 1, 2022 – June 30, 2022) |
| SEC | United States Securities and Exchange Commission |

1 **I. INTRODUCTION**

2 This case is a quintessential example of impermissible fraud by hindsight. Plaintiffs
 3 point to Atlassian's revision of forward-looking guidance due to unexpected impacts of an
 4 unprecedently difficult macroeconomic environment and allege Defendants knew such
 5 impacts would arrive weeks before they did. But Plaintiffs do not allege any particularized facts
 6 demonstrating that any challenged statement was false or misleading when made. Instead,
 7 Plaintiffs take pieces of Atlassian's later descriptions of market headwinds and misrepresent
 8 them out of context to allege Defendants knew of but concealed macroeconomic impacts during
 9 the first quarter of fiscal year 2023. But even a cursory review of Defendants' statements shows
 10 that Defendants disclosed impacts on *different* business metrics as they began to appear.

11 Plaintiffs' case amounts to a demand for real time and *intra-quarter* updates on potential business
 12 impacts from economic headwinds that may or may not come true. That is not the law;
 13 accordingly, the Amended Complaint should be dismissed.

14 Atlassian has experienced (and continues to experience) extraordinary growth by offering
 15 customers software that helps teams organize, discuss, and complete shared work at competitive
 16 and affordable prices. Atlassian offers free subscriptions for new customers for up to ten users,
 17 and charges a relatively low cost per user if a customer converts to a paid subscription. Atlassian
 18 measures these subscriptions through two different metrics: (1) free customers who convert to
 19 paid subscriptions (“Free-to-Paid Conversions”); and (2) existing paying customers who add
 20 additional users to their subscriptions (“Existing Paid User Expansion”). On August 4, 2022,
 21 Atlassian announced on its earnings call for the fourth quarter and full fiscal year 2022 (which
 22 ended June 30, 2022) that, despite the difficult global environment, it had met its guidance, and
 23 had not yet seen any impact on Existing Paid User Expansion, which accounts for over 90% of
 24 Atlassian’s revenue. Atlassian specifically warned, however, that it was “not immune” from
 25 macroeconomic headwinds that were beginning to be felt throughout the global economy (and
 26 particularly in the software industry) at that time, and it disclosed a slight slowdown in Free-to-
 27 Paid Conversions. And it provided guidance for the coming fiscal year and the following
 28 quarter.

1 In announcing earnings for the next quarter (the first quarter of fiscal year 2023) on
 2 November 3, 2022, Atlassian disclosed that just like virtually every other technology company,
 3 the macroeconomic environment had begun to have a greater impact on the business. It
 4 announced that in the second half of the first quarter, Atlassian had begun to see an impact on
 5 Existing Paid User Expansion. It also announced that the slowdown in Free-to-Paid Conversions
 6 (which it disclosed in the prior quarter) had become more pronounced. Despite these impacts,
 7 Atlassian still met its quarterly revenue, GAAP gross margin, and non-GAAP operating margin
 8 guidance. However, because it assumed the difficult macroeconomic conditions would continue
 9 to impact the business, Atlassian lowered its forward-looking guidance for the full year fiscal
 10 year 2023.

11 Atlassian's stock price temporarily declined following that first quarter earnings
 12 announcement and revision of guidance. Plaintiffs quickly filed suit, alleging that Atlassian had
 13 concealed material adverse trends affecting Atlassian's business metrics. Plaintiffs' allegations
 14 fail to state a securities fraud claim.

15 **No Misstatement.** Plaintiffs fail to allege a single particularized fact suggesting that any
 16 macroeconomic impact occurred sooner than Atlassian disclosed. Plaintiffs conflate two distinct
 17 metrics (Free-to-Paid Conversions and Existing Paid User Expansion), and misleadingly contend
 18 that Defendants "admitted" on November 3 that there had been a slowdown in *Existing Paid*
 19 *User Expansion* dating back to the beginning of the first quarter of fiscal year 2023. That is
 20 wrong. Atlassian disclosed in its November 3, 2022 shareholder letter that Atlassian had *started*
 21 to see an impact on its Existing Paid User Expansion metric beginning in the *second half* of the
 22 *just completed* first quarter of fiscal year 2023 (ended September 30, 2022). Plaintiffs do not
 23 point to any statement, and the Amended Complaint contains not a single fact suggesting any
 24 slowdown in Existing Paid User Expansion occurred sooner than Atlassian disclosed—in the
 25 second half of the first quarter. Atlassian historically had a linear and non-seasonal sales cycle,
 26 but it never promised that linearity would continue—on the contrary, it expressly warned that the
 27 economic environment and shift to cloud-based services could affect historical sales cycles.
 28 Atlassian had no duty to provide Plaintiffs and investors with intra-quarter updates, and Plaintiffs

1 fail to allege any facts suggesting Atlassian misled investors when it provided updates each
 2 quarter about the impacts it was seeing on its business metrics.

3 **No Scienter.** Even if Plaintiffs had identified an actionable misstatement or omission
 4 (they have not), they have fallen far short of their heavy burden of pleading with particularity
 5 that any Defendant acted with an intent or deliberate recklessness to defraud investors. Plaintiffs
 6 do not allege any motive to commit fraud: there are no allegations of any suspicious or unusual
 7 insider stock sales, or any other effort by any Defendant to capitalize on this supposed scheme.
 8 Accordingly, the notion that any Defendant intentionally or recklessly misled investors with no
 9 apparent motive, while knowing that the impact of macroeconomic conditions on Atlassian's
 10 growth would be disclosed in Atlassian's next quarterly filings makes no sense.

11 Plaintiffs also plead no facts supporting the necessary strong inference that any
 12 Defendant deliberately made a misstatement intending to mislead investors. Instead, Plaintiffs
 13 allege generally that certain Individual Defendants had "access" to databases and monitored the
 14 business, but they cite no specific information given to Individual Defendants that contradicted a
 15 challenged statement. And while Plaintiffs allege Defendants "admitted" after the class period
 16 they had seen a slowdown in Existing Paid User Expansion during the last quarter of fiscal year
 17 2022, Defendants said no such thing. Instead, just as it had previously disclosed in August 2022,
 18 Atlassian noted it had started to see a slowdown in *Free-to-Paid Conversions* during the last
 19 quarter of fiscal year 2022, and that it began to see a slowdown in *Existing Paid User Expansion*
 20 in the *second half* of the first quarter of fiscal year 2023. The more compelling inference from
 21 these facts is that Defendants updated investors as soon as macroeconomic headwinds began to
 22 have a meaningful impact on Atlassian's business. That is the opposite of fraud.

23 The Amended Complaint should be dismissed.

24 **II. BACKGROUND**

25 **A. Atlassian Achieves Growth by Providing Free Productivity-Enhancing
 26 Software and Then Expanding Its Customer Relationships**

27 Atlassian is a technology company that develops, sells, and licenses team collaboration
 28 software designed to enhance productivity and help teams work together. ¶¶ 4, 33. Among its

1 many tools are: Jira Software and Jira Work Management, for team planning and project
 2 management; Confluence, for team content creation and sharing; Jira Service Management, for
 3 team service and support applications; Trello for capturing and adding structure to fluid, fast
 4 forming work for teams; Opsgenie, for incident management; Jira Align, for enterprise agile
 5 planning; and Bitbucket, for team code sharing and management. Ex. A at 39-40. Atlassian was
 6 founded in 2002 by Michael Cannon-Brookes and Scott Farquhar, who serve as co-CEOs, joined
 7 during the class period by then-COO Ms. Bharadwaj (who was promoted to President in
 8 February 2023) and CRO Mr. Deatsch. ¶ 3. Atlassian takes pride in its culture—The Atlassian
 9 Values—which includes transparency and openness throughout the organization and including
 10 with its customers and investors. ¶ 34.

11 Atlassian is unique in that it does not rely primarily on a traditional sales force to
 12 distribute and sell its products. ¶ 36. Instead, Atlassian offers its products free to new
 13 customers, up to ten users per account. ¶ 37. It then generates most of its revenue when a
 14 customer converts to a paid subscription (e.g., with more than ten users), Free-to-Paid
 15 Conversions, which accounts for approximately 10% of Atlassian’s revenue, or when an existing
 16 paying customer adds additional users for a fee, Existing Paid User Expansion, which accounts
 17 for approximately 90% of Atlassian’s revenue. ¶¶ 37-39. Atlassian also generates revenue
 18 through upgrades to premium or enterprise plans that include additional services and features
 19 more personalized to the customer (“Subscription Upgrades”). Ex. A at 38, 39; *see also* ¶ 63.

20 In part because Atlassian does not primarily rely on a traditional sales force, it has
 21 historically had a relatively linear sales cycle, meaning that it does not experience a significant
 22 “hockey stick” style uptick in sales at the end of each quarter or fiscal year, as is otherwise
 23 common in the software industry. ¶¶ 41-45 (largely citing statements well before the class
 24 period). But at the beginning of the class period in August 2022, Atlassian noted that certain
 25 events including a transition from selling products hosted on customers’ servers to cloud-based
 26 operations could “drive short-term variability” (Ex. A at 39), and it specifically warned that
 27 despite its historical linear sales cycle, “quarterly financial results may fluctuate as a result of a
 28 variety of factors, many of which are outside of our control” (*id.* at 10). Atlassian also warned

1 that “*the impact of the current economic uncertainty* may cause customers to request
 2 concessions, including better pricing, or to slow their rate of expansion or reduce their number of
 3 licenses, *which may not be reflected immediately in our results of operations.*” *Id.* at 12
 4 (emphasis added).

5 **B. Atlassian Provides Q4 and FY 2022 Results and FY 2023 Revenue Guidance,
 6 While Warning That Its Growth Could Be Impacted by Market Conditions**

7 The class period begins on August 4, 2022, when Atlassian issued a press release and—
 8 consistent with its longstanding culture of transparency—a detailed shareholder letter
 9 announcing financial results for the fourth quarter and full fiscal year 2022, which ended June
 10 30, 2022. *See* Ex. C; ¶¶ 51-52. Atlassian hosted an investor call the same day. Ex. B; ¶¶ 53-54.

11 In the shareholder letter, Atlassian did not say it would not be impacted by the broader
 12 macroeconomic environment (¶ 51); rather, Atlassian’s first observation in that letter was a
 13 warning that “we find ourselves in a climate of widespread uncertainty.” Ex. C at 2. Atlassian
 14 expressed optimism about its ability to weather the storm of “unsettling world events and
 15 headlines reporting macroeconomic volatility,” but noted that it was “not insulated from broader
 16 macroeconomic pressures.” *Id.*; *see also id.* at 14. Atlassian specifically disclosed that it had
 17 already begun to see some softening in the fourth quarter of fiscal year 2022 in the Free-to-Paid
 18 Conversion portion of its business (which accounts for just 10% of its revenues). *Id.* at 14; ¶ 54.
 19 And while Atlassian stated that “nothing we are seeing *right now* is changing our outlook”
 20 including based on projected revenue from existing paying customers, Atlassian was clear with
 21 investors that it would need to “*remain vigilant* in this environment.” Ex. C. at 2, 14 (emphasis
 22 added); ¶¶ 52-53). In its accompanying Annual Report, Atlassian expressly disclosed several
 23 macroeconomic pressures as “trends” that could have a material effect on its revenues, including
 24 “[w]eakening economic conditions as a result of the COVID-19 pandemic, rising inflation,
 25 increases in interest rates, and Russia’s invasion of Ukraine,” and warned investors that “the
 26 extent to which any of these risks ultimately impacts our business . . . will depend on future
 27 developments, which are uncertain and cannot be predicted at this time.” Ex. A at 66. In the
 28 same trends section, Atlassian cautioned “we have revenue exposure to customers who are small-

1 and medium-sized businesses and to industries that may be disproportionately impacted by
 2 weakening economic conditions,” “[a]lso, a majority of our Cloud customers choose to be billed
 3 on a monthly basis and many of these customers are small and medium-sized business that may
 4 be adversely impacted by weakening economic conditions,” and “we may experience elongated
 5 sales cycles and extended payment terms and concessions due to weakening economic
 6 conditions.” *Id.*

7 During a later investor conference held on September 14, 2022, Atlassian’s then-COO
 8 Ms. Bharadwaj reiterated in response to an analyst’s question that Atlassian was not immune to
 9 “overall macroeconomic conditions.” Ex. D at 9; ¶¶ 61-62. She confirmed (as Atlassian had
 10 previously disclosed) that with respect to Free-to-Paid Conversions “we are seeing a bit of
 11 softness over the past couple of months.” Ex. D at 9. But contrary to what Plaintiffs allege (¶
 12 63), Ms. Bharadwaj did not provide any assurances with respect to trends that may be impacting
 13 Existing Paid User Expansion. *See* Ex. D at 9. In fact, in response to a follow-up question from
 14 another analyst, Ms. Bharadwaj explained that Existing Paid User Expansion was “an area that
 15 we continue to monitor” and “that’s going to be an important one to look at in the current
 16 climate”:

17 And user expansion, which is unique to the Atlassian model of
 18 organic growth, user expansion is a place where we don’t go off
 19 and try to do – try to influence that using a bunch of levers. We let
 20 that happen organically because that’s how we believe we
 21 construct our long-term sustainable business model with low
 [customer acquisition costs]. *That’s an area that we continue to
 monitor.* That’s not an area where we try to do a lot of product
 interventions, *but that’s going to be an important one to look at in
 the current climate.* *Id.* at 10 (emphasis added); ¶ 63.

22 For the only other “trend” Ms. Bharadwaj mentioned—Subscription Upgrades from free to
 23 standard, standard to premium, and premium to enterprise—she explained she personally had not
 24 seen “any discernable trend . . . in terms of the macroeconomic impact.” Ex. D at 10.

25 **C. Atlassian Redomiciles From the United Kingdom to the United States**

26 Earlier in 2022, Atlassian disclosed to its shareholders that it would redomestic its parent
 27 company to the United States, incorporating in Delaware, effective September 30, 2022,
 28 following board and shareholder approval. *E.g.*, Ex. C at 17; *see also* ¶ 19. In connection with

1 the redomiciliation, Atlassian Corporation Plc shares were cancelled, and its shareholders
 2 received an equal number of Atlassian Corporation shares. ¶ 20. The redomiciliation required
 3 Atlassian to file certain documents with the SEC to effectuate the move, including a post-
 4 effective amendment to its existing registration statements on Form S-8 for its employee stock
 5 award plans, which in turn required Atlassian to incorporate by reference its most recently filed
 6 Annual Report. ¶¶ 94 n.18, 100. Atlassian filed the post-effective Form S-8 amendment on
 7 October 4, 2022 (¶ 100).

8 **D. Atlassian Announces Q1 23 Financial Results That Met Its Guidance, but
 9 Revises Forward-Looking Guidance for the Remainder of FY 2023 Given the
 Emergence of Macroeconomic Headwinds**

10 On November 3, 2022, Atlassian announced its financial results for the next quarter—its
 11 first quarter of fiscal year 2023, covering the period July 1, 2022 to September 30, 2022. Ex. E;
 12 Ex. F; ¶¶ 66-73. Atlassian did not announce “poor financial results” (¶ 66), but rather reported
 13 revenue of \$807 million, GAAP gross margin of 82.7%, and non-GAAP operating margins of
 14 18% (Ex. F at 12, 14; Ex. E at 1), *at the high end* of its \$795 million to \$810 million guidance,
 15 *above* GAAP gross margin guidance of 80%-81%, and exactly the same as non-GAAP operating
 16 margin guidance of 18% (Ex. C at 3).

17 While Atlassian had turned in a strong quarter, it also informed investors that it was
 18 “beginning to see the impact” of economic headwinds on its business. Ex. F at 2, 11.
 19 Specifically—and in “the spirit of our ‘Open company, no bullshit’ value”—Atlassian reported:
 20 “1) We saw a more pronounced continuation of the trend discussed last quarter, where fewer
 21 Free instances converted to paid plans; and 2) we also saw the growth of paid users from existing
 22 customers slow in the second half of Q1.” *Id.* at 11. Both of these trends were “the result of
 23 companies tightening their belts and slowing their pace of hiring.” *Id.*; ¶ 67; *see also* Ex. G at 8
 24 (Farquhar: reduction in growth rates was the product of “customers who are dealing with their
 25 own turbulence” and addressing their own internal spending and headcount needs); *id.* at 10
 26 (Deatsch: Atlassian’s customers had slowed down hiring which “slows down our user growth”);
 27 *id.* at 11 (Farquhar: “customers are not adding seats and heads . . . because the hiring
 28

1 environment has changed”). To account for this slowdown and in keeping with its commitment
 2 to transparency with investors, Atlassian lowered its cloud-based revenue guidance for the
 3 remainder of its fiscal year, from 50% year-over-year projected growth to a range of
 4 approximately 40% to 45% year-over-year projected growth for fiscal year 2023. Ex. F at 15.

5 **E. Plaintiffs File This Lawsuit**

6 After Atlassian revised its go-forward guidance in November 2022, Atlassian’s stock
 7 price dropped. ¶ 74. Plaintiffs reflexively filed suit soon after. Dkt. No. 1. Plaintiffs filed the
 8 operative Amended Complaint on July 14, 2023. Dkt. No. 40.

9 **III. LEGAL STANDARD**

10 To state a Section 10(b) securities fraud claim, Plaintiff must plead with particularity that
 11 a defendant made a (1) material misrepresentation or omission of fact, (2) with scienter, and (3)
 12 that caused the plaintiff’s economic losses. *In re Rigel Pharms., Inc. Sec. Litig.*, 697 F.3d 869,
 13 876 (9th Cir. 2012). Plaintiff must also satisfy the “heightened pleading requirements” of Rule
 14 9(b) and the PSLRA which apply to “all elements of a securities fraud action,” and “present no
 15 small hurdle.” *Or. Pub. Emps. Ret. Fund v. Apollo Grp. Inc.*, 774 F.3d 598, 605 (9th Cir. 2014).

16 Plaintiff must “specify each statement alleged to have been misleading, the reason or
 17 reasons why the statement is misleading,” and to “state with particularity all facts on which that
 18 belief [that a statement is misleading] is formed.” 15 U.S.C. § 78u-4(b)(1)(B). And Plaintiff
 19 must plead particularized facts giving rise to a strong inference of scienter, either that Defendants
 20 acted with an “intent to deceive, manipulate, or defraud” or with deliberate recklessness, which
 21 is “actually much closer to one of intent.” *Tellabs, Inc. v. Makor Issues & Rights, Ltd.*, 551 U.S.
 22 308, 319 (2007); *In re NVIDIA Corp. Sec. Litig.*, 768 F.3d 1046, 1053 (9th Cir. 2014). In
 23 addition, to plead loss causation, Plaintiff must allege with particularity sufficient facts indicating
 24 that “the revelation of [the alleged] misrepresentation or omission was a substantial factor in
 25 causing a decline in the security’s price.” *Mulquin v. Nektar Therapeutics*, 510 F. Supp. 3d 854,
 26 870 (N.D. Cal. 2020). In ruling on a motion to dismiss, courts “need not accept as true
 27 allegations that are conclusory, unwarranted deductions of fact, or unreasonable inferences.”
 28 *Tietsworth v. Sears, Roebuck & Co.*, 720 F. Supp. 2d 1123, 1132 (N.D. Cal. 2010).

1 **IV. ARGUMENT**

2 **A. Plaintiffs Do Not Plead Any False or Misleading Statement**

3 Plaintiffs challenge nine statements from August 4 to October 4, 2022, alleging that
4 Defendants misled investors by not disclosing purported “material adverse trends” caused by
5 macroeconomic headwinds on two of Atlassian’s business metrics (Free-to-Paid Conversions
6 and Existing Paid User Expansion) during the first quarter of fiscal year 2023. But Plaintiffs
7 allege no facts establishing any contemporaneous facts that contradicted what Defendants told
8 the market. *See Norfolk Cnty. Ret. Sys. v. Solazyme, Inc.*, 2016 WL 7475555, at *3 (N.D. Cal.
9 Dec. 29, 2016) (dismissing securities fraud claims where “allegations omit contemporaneous
10 facts that would establish a contradiction between the alleged materially misleading statements
11 and reality”); *see also Weston Family P’ship LLLP v. Twitter, Inc.*, 29 F.4th 611, 619 (9th Cir.
12 2022) (“[f]or a statement to be misleading, it must directly contradict what the defendant knew at
13 the time or omit material information”) (internal quotation marks omitted).

14 Instead, Plaintiffs seek to manufacture a claim by misrepresenting what Defendants said
15 about what Atlassian was seeing and when. Atlassian disclosed at the start of the class period
16 that macroeconomic conditions were having a negative impact on one of its business metrics,
17 Free-to-Paid Conversions. And while it had yet to see those same conditions impacting the
18 Existing Paid User Expansion metric, Atlassian cautioned that it was not immune to broader
19 market conditions, that the economic slowdown could have an impact in the future, and that it
20 would continue to be vigilant. When macroeconomic conditions began to impact Existing Paid
21 User Expansion in the second half of the first quarter of fiscal year 2023, Atlassian promptly
22 disclosed that fact in its next earnings call on November 3, 2022. Atlassian announced that while
23 it met its revenue, GAAP gross margin, and non-GAAP operating margin guidance for the first
24 quarter of fiscal year 2023, it had seen a slowdown in Existing Paid User Expansion beginning in
25 the *second half of that just-completed first quarter*, and that slowdown justified revising its
26 forward-looking guidance for the rest of the fiscal year. That is transparency, not fraud.

27

28

1 **1. Mr. Deatsch's August 4, 2022 Statements Regarding Macroeconomic**
 2 **Impacts Were Not False**

3 Plaintiffs challenge four statements made by Mr. Deatsch during Atlassian's August 4,
 4 2022 earnings call discussing results for the fourth quarter and fiscal year ended June 30, 2022:

- 5 • “The good news *as of to date* is we have *yet to see* any specific trend geographically
 6 or even in industry segments or in customer size that gives us pause or worry to date.
 7 So, something we continue to watch like a hawk, but there is no news to share today.” ¶ 89.
- 8 • “[W]e have not seen any significant shift in customer demand across our product
 9 lines,” and “we continue to see demand for collaboration products that continue to be
 10 strong.” *Id.*
- 11 • The slowdown in free-to-paid customer conversions was a “slight thing” that “does
 12 not take away from the continued growth we see in our existing customer base that
 13 also drives more than 90% of our revenue in the existing year.” ¶ 92.
- 14 • Atlassian’s “existing customers continue to have demand for what our products do to
 15 help their teams work more productively in the future,” and Atlassian would
 16 “continue to be vigilant.” *Id.*

17 Plaintiffs allege these statements were false because Mr. Deatsch purportedly “admitted” on the
 18 next earnings call for the first quarter of fiscal year 2023 on November 3, 2022, that there had
 19 been impacts on both Free-to-Paid Conversions and Existing Paid User Expansion before August
 20 4, 2022. ¶¶ 90, 93. That argument fails.

21 First, Mr. Deatsch did not “admit” that there had been impacts on *both* Free-to-Paid
 22 Conversions and Existing Paid User Expansion dating back to the start of the first quarter (¶
 23 102). Rather, on November 3, Atlassian disclosed that there was a new impact on Existing Paid
 24 User Expansion that began *during the second half of the first quarter*—and that the impact on
 25 Free-to-Paid Conversions had become more pronounced during the first quarter. Ex. G at 12;
 26 Ex. F at 2, 11. Plaintiffs muddle the two separate metrics.

27 As to the Free-to-Paid Conversions, Mr. Deatsch stated on November 3, “*As we*
 28 *mentioned in August, what we were seeing in the August time frame was the net new*
customers, the free customers converted to paid was slowing down going into August.” Ex. G
 at 12 (emphasis added); ¶ 69. That is, as disclosed on August 4, 2022, Atlassian had begun

1 seeing a slowdown in Free-to-Paid Conversions during the fourth quarter of fiscal year 2022.
 2 Ex. C at 14. That slowdown became more pronounced in the first quarter of 2023. Ex. F at 11.

3 As to the separate Existing Paid User Expansion metric, Atlassian explained on
 4 November 3, 2022 that it had begun to see a slowdown in this metric for the first time *during the*
 5 *second half of the first quarter*. *Id.* at 2, 11. Atlassian did not say on November 3, 2022 that
 6 there had been a slowdown in Existing Paid User Expansion during the *fourth* quarter of fiscal
 7 year 2022, or even the first half of its first quarter of fiscal year 2023. Plaintiffs cannot state a
 8 claim for securities fraud by misrepresenting Defendants' disclosures. *See In re Intel Corp. Sec.*
 9 *Litig.*, 2019 WL 1427660, at *11 (N.D. Cal. Mar. 29, 2019) (dismissing on falsity grounds where
 10 "relevant context" including "the words and sentences surrounding the challenged phrases"
 11 undermined allegations).

12 *Second*, Plaintiffs do not allege any facts that contradict Mr. Deatsch's statements as of
 13 the August 4, 2022 earnings call. Plaintiffs allege no facts suggesting a more pronounced impact
 14 on Free-to-Paid Conversions existed in the fourth quarter of fiscal year 2022, or that Mr. Deatsch
 15 was aware of any slowdown in Existing Paid User Expansion as of August 4, 2022. *See Kong v.*
 16 *Fluidigm Corp.*, 2021 WL 3409258, at *7-8 (N.D. Cal. Aug. 4, 2021) (plaintiff must plead with
 17 particularity that challenged statements were "false when made," including by pointing to
 18 "defendant's statements that directly contradict what the defendant knew at that time").

19 Plaintiffs attempt to contradict Mr. Deatsch's truthful statements by suggesting that given
 20 Atlassian's linear sales cycle, there must have been a slowdown earlier. *See generally ¶¶ 41-49.*
 21 But this allegation makes no sense. Plaintiffs do not challenge Atlassian's disclosure on
 22 November 3, 2022 that the slowdown in Existing Paid User Expansion was *not* linear—it only
 23 began in the *second half* of the first quarter of 2023, due to customers slowing their own hiring.
 24 ¶ 93. While Atlassian's sales cycle may have been historically more linear (as opposed to a
 25 hockey-stick style demand pattern, more common among other software companies), that fact
 26 says nothing about the demand patterns Atlassian actually experienced (and disclosed) in its first
 27 quarter in 2023. Certainly Atlassian never guaranteed that its sales cycle would always be linear;

28

1 instead, it warned of the exact opposite, including that quarterly financial results could fluctuate.
 2 See, e.g., Ex. A at 10-11 (warning that “quarterly results may fluctuate significantly”).

3 Plaintiffs attempt to bolster their deficient claims by pointing to allegations they attribute
 4 to one CW that Atlassian’s sales cycle was historically “linear” (despite the CW only working at
 5 Atlassian for one year) and its software development work (which says nothing about sales) was
 6 not seasonal, and another CW that said that Atlassian had “one of the best data monitoring
 7 systems.” ¶¶ 46, 49. But none of these allegations contradict any challenged statement as none
 8 of the challenged statements purports to speak to linearity in the sales cycle or a lack of
 9 seasonality in software development in the first quarter of fiscal year 2023. Moreover, Atlassian
 10 warned investors that quarterly results could fluctuate, including due to seasonality in operations.
 11 Ex. A at 10-11. Regardless, Plaintiffs cannot rely on their CW allegations, which fall far short of
 12 this Circuit’s standards for CW allegations, which require that each CW “must be described with
 13 sufficient particularity to establish their reliability and personal knowledge.” *Zucco Partners,*
 14 *LLC v. Digimarc Corp.*, 552 F.3d 981, 995 (9th Cir. 2009). Neither CW is alleged to have been
 15 a part of, nor played any role in, Atlassian’s sales process, financial projections or accounting, or
 16 strategic analysis. CW1 was a low-level “Senior Support Engineer” who worked at Atlassian for
 17 just one year and was “responsible for onboarding expansion and net new customers.” ¶ 46 &
 18 n.5. CW2 is alleged to have been a “contractor” working as a “Data Analyst” in Atlassian’s
 19 marketing department. ¶ 49 & n.6. In fact, CW2 is alleged to have left Atlassian well before the
 20 class period, further undermining CW2’s contribution to Plaintiffs’ claims. See *In re Fusion-io,*
 21 *Inc. Sec. Litig.*, 2015 WL 661869, at *18 (N.D. Cal. Feb. 12, 2015) (requiring CW accounts to be
 22 “contemporaneous” with the alleged misstatements). Neither CW is alleged to have ever spoken
 23 to any Defendant. That failure alone renders their allegations irrelevant. See *Veal v.*
 24 *LendingClub Corp.*, 423 F. Supp. 3d 785, 814 (N.D. Cal. 2019) (rejecting CW statements where
 25 there were no allegations the CW had direct or indirect contact with the individual defendants).

26 *Third*, each of the four challenged statements by Mr. Deatsch are non-actionable
 27 corporate optimism. The statements include nonquantifiable vague terms like “watch like a
 28 hawk,” “significant shift,” demand that is “strong,” a “slight” slowdown, and continuing to be

1 “vigilant.” ¶¶ 89, 92. Courts consistently find such “vague, generalized assertions of corporate
 2 optimism” to be actionable because “no reasonable investor would rely on such statements.”
 3 See *Sneed v. AcelRx Pharms., Inc.*, 2023 WL 4412164, at *8 (N.D. Cal. July 7, 2023); see also *In*
 4 *re Fusion-io*, 2015 WL 661869 at *14 (rejecting challenge to statements about “excellent results”
 5 and “significant sales gains” as corporate optimism); *City of Dearborn Heights Act 345 Police &*
 6 *Fire Ret. Sys. v. Align Tech., Inc.*, 2013 WL 6441843, at *11-12 (N.D. Cal. Dec. 9, 2013)
 7 (dismissing as corporate optimism statements reporting a “strong” quarter and “strong growth”).

8 **2. Atlassian’s August 19, 2022 Statement About Material Trends For**
 9 **Atlassian’s 2022 Fiscal Year Was Not False**

10 Plaintiffs challenge a single statement in Atlassian’s Annual Report:

11 Other than as disclosed elsewhere in this Annual Report, we are
 12 not aware of any trends, uncertainties, demands, commitments, or
 13 events for the current fiscal year that are reasonably likely to have
 14 a material effect on our revenues, income, profitability, liquidity or
 capital reserves, or that caused the disclosed financial information
 to be not necessarily indicative of future results of operations or
 financial conditions.

15 ¶ 94; Ex. A at 66. Plaintiffs allege this statement was false because Defendants allegedly knew
 16 there were “significant material adverse ‘trends’ as a result of ‘macro headwinds’ in both key
 17 areas of [Atlassian’s] business.” ¶ 95. This claim, too, fails.

18 First, this statement appears in the “Trend Information” section of the Annual Report
 19 pursuant to Item 5 of SEC Form 20-F (akin to Item 303 of Regulation S-K), which requires
 20 companies to disclose known trends or uncertainties “that are reasonably likely to have a
 21 material effect on the company’s net sales or revenues, income from continuing operations,
 22 profitability, liquidity or capital resources, or that would cause reported financial information not
 23 necessarily to be indicative of future operating results or financial condition.” See SEC Form 20-
 24 F; see also 17 C.F.R. § 229.303 (Item 303).¹ Plaintiffs suggest that this statement violated Item
 25 303, but they don’t actually allege a claim premised on an alleged violation of Item 303—
 26 because they can’t. The Ninth Circuit has expressly held that “Item 303 does not create a duty to

27 ¹ Courts hold Item 5 of Form 20-F (which applies to foreign corporations) calls “for the same
 28 disclosure as Item 303 of Regulation S-K” (which applies to domestic corporations). *Panther*
Partners Inc. v. Jianpu Tech. Inc., 2020 WL 5757628, at *7 n.5 (S.D.N.Y. Sept. 27, 2020).

1 disclose for purposes of Section 10(b).” *NVIDIA*, 768 F.3d at 1056. So Plaintiffs’ backdoor
 2 challenge to Atlassian’s disclosure fails on this basis alone.

3 *Second*, as with the August 4, 2022 challenged statement, Plaintiffs ignore what Atlassian
 4 actually said. The Annual Report discloses that management was not aware of any material
 5 adverse trends or uncertainties that had “a material adverse impact on [Atlassian’s] financial
 6 condition or results of operations *during the fiscal year ended June 30, 2022*.” Ex. A at 66
 7 (discussing lack of known material adverse trends “for the current fiscal year”). Annual reports
 8 necessarily are filed after the conclusion of a fiscal year. In describing what Atlassian had seen
 9 in fiscal year 2022, Atlassian did not purport to speak about the time period between the end of
 10 the fiscal year and the filing date of the Annual Report. Plaintiffs do not allege Atlassian had
 11 experienced any undisclosed impact from macroeconomic headwinds during fiscal year 2022.
 12 And Plaintiffs do not explain how a report for the period of July 1, 2021 to June 30, 2022, could
 13 be false or misleading based on allegations about a more pronounced slowdown in Free-to-Paid
 14 User Conversions and a *new* slowdown in Existing Paid User Expansion that happened after the
 15 reported fiscal year and after the Annual Report was filed.

16 *Third*, Plaintiffs also omit key language in the two paragraphs preceding the challenged
 17 statement. The risks Plaintiffs say Defendants concealed *are disclosed* on the *same page* and in
 18 the very same section as the challenged statement. Atlassian’s complete disclosure does not say
 19 what Plaintiffs ask the Court to assume:

20 **Our results of operations may vary based on the impact of
 21 changes in our industry or the global economy on us or our
 22 customers.** Our business depends on demand for business
 23 software applications generally and for collaboration software
 24 solutions in particular. **Weakening economic conditions** as a
 25 result of the COVID-19 pandemic, rising inflation, increases in
 26 interest rates, and Russia’s invasion of Ukraine **did not**
 27 individually **have a material adverse impact** on our financial
 28 condition or results of operations **during the fiscal year ended
 June 30, 2022; however, the extent to which any of these risks
 ultimately impacts our business, results of operations, and
 financial position will depend on future developments, which
 are uncertain and cannot be predicted at this time.** For
 example, while our diverse customer base is a competitive
 advantage for us and helps fuel our low-friction flywheel sales
 model, **we have revenue exposure to customers who are small-
 and medium-sized businesses and to industries that may be
 disproportionately impacted by weakening economic**

1 **conditions.** Also, a majority of our Cloud customers choose to be
 2 billed on a monthly basis and many of these customers are small
 3 and medium-sized businesses that may be adversely impacted by
 4 weakening economic conditions. In addition, we may experience
 5 elongated sales cycles and extended payment terms and
 6 concessions due to weakening economic conditions.
 7

8 **We will continue investing to pursue the large market**
 9 **opportunities ahead of us, despite macroeconomic headwinds**
 10 **and slower revenue growth. . . .**

11 **Other than as disclosed elsewhere in this Annual Report,** we
 12 are not aware of any trends, uncertainties, demands, commitments,
 13 or events **for the current fiscal year** that are reasonably likely to
 14 have a material effect on our revenues, income, profitability,
 15 liquidity or capital reserves, or that caused the disclosed financial
 16 information to not necessarily be indicative of future results of
 17 operations or financial conditions.
 18

19 Ex. A at 66 (emphasis added); *see Twitter*, 29 F.4th at 621-22 (no falsity where “context makes
 20 clear” challenged statements were not misleading). Plaintiffs cannot state a securities fraud
 21 claim by omitting language just sentences above the challenged statement that directly refutes
 22 their claim. *See Intel*, 2019 WL 1427660, at *11 (dismissing claims where “the relevant context”
 23 including “the words and sentences surrounding the challenged phrases” undermined plaintiff’s
 24 allegations); *see also Welgus v. TriNet Grp., Inc.*, 2017 WL 6466264, at *10 (N.D. Cal. Dec. 18,
 25 2017) (dismissing claims where “[r]ather than plead specific facts that render Defendants’
 26 representations false or misleading, Plaintiff takes pieces of Defendants’ ‘admissions’ out of
 27 context, and urges the Court to adopt an implausible inference of falsity”); *In re Syntex Corp.*
 28 Sec. Litig., 95 F.3d 922, 929 (9th Cir. 1996) (viewing challenged statement “in context,” which
 29 included warning of potential risks whose later materialization did “not reflect on the accuracy of
 30 Defendants’ predictions as stated in the” annual report).

31 Moreover, Defendants warned investors that “the extent to which any of [the enumerated
 32 risks including weakening economic conditions] ultimately impacts our business . . . will depend
 33 on future developments, which are uncertain and cannot be predicted at this time.” Ex. A at 66.
 34 Indeed, Atlassian specifically warned that many of its customers “may be disproportionately
 35 impacted by weakening economic conditions,” which would in turn affect Atlassian’s revenue.
 36 *Id.* Plaintiffs do not allege any fact, much less particularized ones, indicating that any such risk
 37

1 had already materialized at the time of the Annual Report. *See, e.g., Park v. GoPro, Inc.*, 2019
 2 WL 1231175, at *16-17 (N.D. Cal. Mar. 15, 2019) (dismissing challenge to disclosure of risk of
 3 impact from macroeconomic environment where plaintiff failed to allege risk had already
 4 materialized); *Veal v. Lendingclub Corp.*, 2020 WL 3128909, at *8 (N.D. Cal. June 12, 2020)
 5 (similar).

6 **3. Ms. Bharadwaj’s September 14, 2022 Statements Cautioning That
 7 Atlassian Was Continuing to Monitor Macroeconomic Impacts on
 Existing Paid User Expansion Were Not False**

8 Plaintiffs next challenge three of Ms. Bharadwaj’s statements at a September 14, 2022,
 9 Goldman Sachs investor conference where she reiterated the impact macroeconomic headwinds
 10 were having and could have on Atlassian:

- 11 • Atlassian had various “attributes” that gave it “a few advantages in the overall
 12 macroeconomic climate,” including providing “mission-critical software” at a
 “highly, highly competitive” price. ¶ 96.
- 13 • “Just in the last shareholder letter, we talked about conversion of users from free
 14 to paid. We are seeing a bit of softness over the past couple of months. But it’s
 15 important to illustrate the point in the overall picture as over 90% of our revenue
 16 comes from existing customers. So the conversion from free to paid is really a
 17 very small part of our business. And also, the number of free users that are
 coming in that create new free instances continues to grow steadily. We’re not
 seeing any trends there. So across the board, across existing and new, that’s
 overall what we’re seeing in different parts of the business.” ¶ 97.
- 18 • “So to address your question, the way our pricing model works is the first 10
 19 users are free, and then the 11th user onwards, it’s paid . . . So we think of **upsell**
 20 as really across free to standard, standard to premium, premium to enterprise.
 21 And we’ve seen some very encouraging progress there over the last four quarters.
 22 And I haven’t really seen any discernible trend **there** in terms of the
 23 macroeconomic impact. **And user expansion . . . That’s an area that we**
 24 **continue to monitor. That’s not an area where we try to do a lot of product**
 25 **interventions. But that’s going to be an important one to look at in the**
 26 **current climate.**” ¶ 98 (emphasis added).

27 Plaintiffs allege these statements were false because Atlassian supposedly was already seeing
 28 adverse trends. ¶ 99. But to reach this conclusion, first, Plaintiffs once again misrepresent what
 Ms. Bharadwaj actually said and conflate distinct business metrics. And, second, no alleged
 facts contradict anything she said.

1 First, Ms. Bharadwaj spoke about three separate Atlassian business metrics: (1) Existing
 2 Paid User Expansion, (2) Subscription Upgrades, and (3) Free-to-Paid Conversions. Plaintiffs
 3 muddle these distinct metrics to fit their erroneous narrative, but a review of Ms. Bharadwaj's
 4 statements undermines Plaintiffs' claims. As to Existing Paid User Expansion, Ms. Bharadwaj
 5 made no representations *at all* about what she or Atlassian were or were not seeing. Instead, she
 6 noted that Atlassian does not "try to influence that using a bunch of levers," and she expressly
 7 warned investors that this was an "important" area to "look at in the current climate, and that
 8 *Atlassian would "continue to monitor" it.* See *id.* She made no representation about any
 9 macroeconomic impact on Existing Paid User Expansion. See *In re Facebook, Inc. Sec. Litig.*,
 10 477 F. Supp. 3d 980, 1027 (N.D. Cal. 2020) (rejecting omissions theory where defendants did
 11 not make guarantees about the future and "simply stat[ed] the relevant data and promis[ed] to
 12 'continue to monitor'" because that "makes no promise about future results"); *Irving Firemen's
 13 Relief & Ret. Fund v. Uber Techs.*, 2018 WL 4181954, at *5 (N.D. Cal. Aug. 31, 2018) (finding
 14 no falsity where statement did not "affirmatively le[a]d [investors] in a wrong direction"). Nor
 15 did Ms. Bharadwaj have any duty to provide (or speculate about) an intra-quarter update on
 16 whether there was or was not a trend impacting Existing Paid User Expansion. See *Twitter*, 29
 17 F.4th at 620 ("companies do not have an obligation to offer an instantaneous update of every
 18 internal development"); see also *In re Intel Corp. Sec. Litig.*, 2023 WL 2767779, at *18 (N.D.
 19 Cal. Mar. 31, 2023) (plaintiffs' omission theory failed because company did not have duty to
 20 disclose interim internal update); *In re Splash Tech. Holdings, Inc. Sec. Litig.*, 160 F. Supp. 2d
 21 1059, 1077-78 (N.D. Cal. 2001) (no duty to update because "[s]tatements regarding past events
 22 contain no implicit prediction that those events or conditions will continue in the future").

23 As to Subscription Upgrades—which are upgrades in an existing user's subscription to
 24 add services and features—Ms. Bharadwaj said Atlassian was not seeing "any trends" related to
 25 "macroeconomic impact." ¶ 98 ("I haven't really seen any discernible trend **there** in terms of
 26 the macroeconomic impact."). Plaintiffs do not (and cannot) allege any connection between
 27 Subscription Upgrades and Existing Paid User Expansion.

28

1 With respect to Free-to-Paid Conversions, Ms. Bharadwaj discussed the impacts that had
 2 been disclosed “[j]ust in the last shareholder letter.” Ex. D at 9. She reiterated that Atlassian had
 3 seen some slowdowns in Free-to-Paid conversions in the period ended June 30, 2022, and
 4 referred to Atlassian’s August 4, 2022 disclosure of those slowdowns. *Id.*

5 Second, Plaintiffs have not alleged any facts suggesting there *was* a discernible trend in
 6 Existing Paid User Expansion as of September 14, 2022. All that Plaintiffs point to is
 7 Defendants’ purported “admission” in November 2022 about the “timing” of a slowdown in
 8 Existing Paid User Expansion. ¶ 99. But that statement in November 2022 explained that while
 9 Atlassian *met its quarterly revenue guidance*, Atlassian *started* seeing a slowdown in Existing
 10 Paid User Expansion in the *second half* of the first quarter of fiscal year 2023, *i.e.* beginning at
 11 the earliest in mid-August, and that slowdown persisted into the fall. Ex. G at 12. Four weeks of
 12 a slowdown is not a *trend* that contradicted any of Ms. Bharadwaj’s prior statements. *See*
 13 *Golubowski v. Robinhood Markets, Inc.*, 2023 WL 1927616, at *8 (N.D. Cal. Feb. 10, 2023)
 14 (dismissing claim based on purportedly undisclosed trend for failure to adequately allege that
 15 “declines” over three-month period “accurately reflect[ed] persistent conditions”); *Blackmoss*
 16 *Invs. Inc. v. ACA Cap. Holdings, Inc.*, 2010 WL 148617, at *10 (S.D.N.Y. Jan. 14, 2010) (two-
 17 month period does not establish a trend). A “trend” involves an “observed *pattern* [that]
 18 accurately reflects *persistent conditions* of the [company’s] business environment.” *Oxford*
 19 *Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1191 (11th Cir. 2002) (emphasis added). Plaintiffs
 20 offer no allegations establishing such a persistent pattern. *See Sanders v. Realreal, Inc.*, 2021
 21 WL 1222625, at *22 (N.D. Cal. Mar. 31, 2021) (plaintiffs failed to allege trend where business
 22 metric declined for one year but increased in prior and subsequent periods and was therefore
 23 more of a “singular occurrence”).

24 **4. Atlassian’s Incorporation by Reference of Its Annual Report in the
 25 October 4, 2022 S-8 Does Not Change the Fact That Its Statement
 26 Addressed Material Trends for FY 2022**

27 Plaintiffs make passing reference to the fact that on October 4, 2022, Atlassian filed a
 28 post-effective amendment to a prior SEC filing on Form S-8—related to Atlassian’s employee
 stock plans—as required in connection with its redomiciliation. ¶¶ 65, 100. According to

1 Plaintiffs, the Form S-8 was false or misleading because it incorporated Atlassian's Annual
 2 Report by reference, which (Plaintiffs say) "reconfirmed" Atlassian's August 19, 2022
 3 statements regarding material trends after its first quarter was over. ¶ 65.

4 This argument rests on a faulty legal premise. In filing a post-effective amendment that
 5 incorporates an earlier filing by reference, the filer (in this case, Atlassian) is not reaffirming the
 6 accuracy of the facts and statements in the earlier filing as of a new, current date. Rather,
 7 incorporation of a prior filing speaks only to matters *as of the date of that earlier filing*, here,
 8 August 19, 2022. *See In re Stemline Therapeutics, Inc. Sec. Litig.*, 313 F. Supp. 3d 543, 548-49
 9 (S.D.N.Y. 2018) (holding that company's incorporation of annual report by reference into
 10 subsequent SEC filing did not render annual report's discussion of data from prior period false or
 11 misleading when made). Indeed, Atlassian's Form S-8 filing makes it clear that the Annual
 12 Report incorporated by reference is for the period ended June 30, 2022, and nothing in the
 13 Annual Report purports to speak of any event or occurrence outside of the period July 1, 2021 –
 14 June 30, 2022. Ex. H. There were no statements in the Form S-8 about Atlassian's financial
 15 results or guidance, much less any trends in Free-to-Paid Conversions or Existing Paid User
 16 Expansion. Plaintiffs' challenge to this statement fails.

17 B. Plaintiffs Fail to Plead a Strong Inference of Scienter

18 Plaintiffs' claims should be dismissed for the independent reason that they do not plead
 19 particularized facts as to each Defendant supporting a strong inference of scienter. *See* 15 U.S.C.
 20 § 78u-4(b)(2); *Apollo*, 774 F.3d at 607. “[M]ere recklessness or a motive to commit fraud and
 21 opportunity to do so . . . are not sufficient” to plead scienter. *Zucco*, 552 F.3d at 991. Instead,
 22 Plaintiffs must allege specific facts establishing that “the defendants made false or misleading
 23 statements either intentionally or with deliberate recklessness.” *Id.* Deliberate recklessness is a
 24 high bar requiring “intentional or knowing conduct” and an “extreme departure from the
 25 standards of ordinary care, and which presents a danger of misleading buyers or sellers that is
 26 either known to the defendant or is so obvious that the actor must have been aware of it.” *Id.*
 27 And Plaintiffs must plead facts from which an inference of fraudulent intent is “more than
 28 merely plausible or reasonable—it must be cogent and at least as compelling as any opposing

1 inference of nonfraudulent intent.” *Tellabs*, 551 U.S. at 314. As the Ninth Circuit has
 2 consistently recognized, this “is not an easy standard to comply with—it is not intended to be—
 3 and plaintiffs must be held to it.” *Eminence Cap., LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th
 4 Cir. 2003); *see also Nguyen v. Endologix, Inc.*, 962 F.3d 405 (9th Cir. 2020). Plaintiffs do not
 5 come close to meeting this standard. Indeed, Plaintiffs do not allege any of the typical hallmarks
 6 of scienter—no reports given to the Individual Defendants contradicting their public statements,
 7 no meetings attended by the Individual Defendants where contradictory information was
 8 discussed, no unusual or suspicious stock sales by any Individual Defendant. Plaintiffs’ lack of
 9 any cognizable scienter theory is fatal to their claims.

10 **1. Plaintiffs Do Not Allege Any Fact Establishing a Motive to Defraud**

11 Plaintiffs do not even attempt to plead that any Defendant had a motive or opportunity to
 12 commit fraud. They acknowledge (in a footnote) that Individual Defendants Farquhar and
 13 Cannon-Brookes sold stock during the class period pursuant to longstanding Rule 10b5-1 trading
 14 plans that result in the sale of exactly the same number of shares across every single trading day
 15 during the year. *See ¶ 103 n.19; Ex. I.* These Rule 10b5-1 trading plans were adopted in
 16 February 2022, long before the start of the class period, and mirror what Individual Defendants
 17 Farquhar and Cannon-Brookes have done since Atlassian’s 2015 initial public offering. *See id.*
 18 Because these stock sales were made pursuant to pre-established 10b5-1 plans, they are not
 19 suspicious and do not support scienter. *See Park*, 2019 WL 1231175, at *23. And there can be
 20 no legitimate dispute that daily sales of the exact same number of shares every trading day both
 21 before and after the class period are neither unusual nor remotely suspicious. *See, e.g., In re*
 22 *Pixar Sec. Litig.*, 450 F. Supp. 2d 1096, 1104 (N.D. Cal. 2006) (requiring plaintiff to allege
 23 insider sales were “unusual” or “suspicious” or “dramatically out of line with prior trading
 24 practices at times calculated to maximize the personal benefit from undisclosed inside
 25 information”).

26 The notion that Defendants deliberately misled investors about Atlassian’s business
 27 prospects between August and October 2022 while purportedly knowing that Atlassian would
 28 have to reduce its financial guidance in the next quarter due to macroeconomic headwinds—all

1 with no apparent motive—makes no sense. *See Endologix*, 962 F.3d at 415-16 (fraud theory
 2 implausible where complaint lacked any allegations that defendants had attempted to profit from
 3 false statements; it “does not resonate in common experience” for a company to artificially
 4 inflate stock prices before “fac[ing] the inevitable fallout”). In the absence of alleged facts
 5 establishing that Defendants somehow profited from their purportedly false statements, it is
 6 “much less likely” that Plaintiffs can meet the high bar required to plead scienter. *Prodanova v.*
 7 *H.C. Wainwright & Co., LLC*, 993 F.3d 1097, 1108 (9th Cir. 2021) (the “lack of a plausible
 8 motive certainly makes it much less likely that a plaintiff can show a strong inference of
 9 scienter.”); *see also Bodri v. GoPro, Inc.*, 252 F. Supp. 3d 912, 933 (N.D. Cal. May 1, 2017) (the
 10 “absence of a motive allegation . . . significantly undermine[s] a plaintiff’s theory of fraud”).

11 **2. Plaintiffs’ Allegations Do Not Establish That Any Defendant Acted
 12 With an Intent to Deceive or Deliberate Recklessness**

13 Plaintiffs’ scienter theory assumes Atlassian and its executives assured investors
 14 Atlassian was not experiencing slowing growth from macroeconomic headwinds and issued
 15 misleading forward-looking guidance—all the while, knowing it would need to withdraw that
 16 guidance a few months later. Not only is this theory entirely illogical, it is also unsupported by
 17 specific alleged facts. Plaintiffs do not identify any facts—documents, meetings, statements, or
 18 even any relevant and credible CW accounts—establishing that any Defendant made any
 19 particular statement knowing it was false. *See In re Arrowhead Pharms., Inc. Sec. Litig.*, 2017
 20 WL 8791111, at *6 (C.D. Cal. Dec. 21, 2017) (no scienter absent particularized facts showing
 21 defendants had actual knowledge of information contradicting challenged statements). Instead,
 22 Plaintiffs rely on (1) alleged contemporaneous knowledge of material adverse trends based on
 23 Defendants’ close monitoring and a historically linear sales cycle, (2) a core operations
 24 inference, (3) analyst comments, and (4) an unalleged Item 303 (or Item 5) violation. Each fails.

25 Atlassian’s Monitoring of Metrics Supports Good Faith, Not Scienter. Plaintiffs’ scienter
 26 theory depends largely on its allegations the Individual Defendants “monitored trends and
 27 subscriber metrics closely,” and that given Atlassian’s “linear” sales cycle, they must have
 28 known when they made the challenged statements in August and September that macroeconomic

1 headwinds would significantly impact Atlassian’s projected financial performance later in its
 2 fiscal year. ¶¶ 102-04, 109. But Plaintiffs do not allege specific facts (as they must) establishing
 3 that any Individual Defendant was aware of any specific information, as of any challenged
 4 statement, contradicting what any of the Individual Defendants said. Indeed, Plaintiffs rely on
 5 Mr. Deatsch’s purported explanation “that he and Defendants Farquhar and Cannon-Brookes
 6 personally monitored” certain metrics, without alleging anything about what those metrics
 7 showed, let alone that they reflected slowing growth rates at the time of the challenged
 8 statements. Plaintiffs do not allege a single fact showing the amount or rate by which growth
 9 was purportedly slowing, when it was purportedly slowing, or whether any slowing was
 10 temporary or persistent (or how any Individual Defendant could have discerned any trend at the
 11 time of the challenged statements).

12 Further, Plaintiffs do not allege that Ms. Bharadwaj was monitoring financial metrics and
 13 had any information on September 14, 2022 contradicting the statements she made—they do not
 14 even allege that she monitored the same information and they cannot rely on group pleading
 15 allegations. *See In re Finisar Corp. Deriv. Litig.*, 2012 WL 2873844, at *9 (N.D. Cal. July 12,
 16 2012) (requiring scienter be alleged on an “individualized, defendant-by-defendant basis” and
 17 holding group pleading is “not permissible under the PSLRA”); *see also Apollo*, 774 F.3d at 607
 18 (scienter must be alleged “with respect to each of the individual defendants”). Absent
 19 allegations establishing that a particular Individual Defendant had information directly
 20 contradicting his or her statements at the time they were made, Plaintiffs cannot establish
 21 scienter. *See, e.g., Lipton v. Pathogenesis Corp.*, 284 F.3d 1027, 1035-36 (9th Cir. 2002)
 22 (rejecting scienter allegations based on conclusory statements about management’s access to
 23 supposed “negative internal reports” about customer demand without particularized allegations
 24 of specific information contradicting defendants’ public statements); *In re Wet Seal, Inc. Sec.*
 25 *Litig.*, 518 F. Supp. 2d 1148, 1175 (C.D. Cal. 2007) (rejecting scienter allegations based on
 26 management access to real-time reports because, as here, “Plaintiffs have not alleged any
 27 specific data that the individual Defendants learned from these reports that were inconsistent
 28 with [the company’s] public statements”).

1 Plaintiffs seek to fill this gap by offering speculative allegations that Defendants (1) had
 2 access to and monitored financial “metrics” (¶¶ 29, 49, 103), (2) “admitted” in November that
 3 material trends were known in July 2022 (¶ 102), and (3) must have known of an emerging trend
 4 based on Atlassian’s historically linear sales cycle (¶ 104). None establishes scienter.

5 *First*, Plaintiffs’ vague and conclusory allegations that Defendants had access to
 6 unspecified “metrics” and monitored Atlassian’s financial performance are the type of
 7 generalized allegations courts have long held do not suffice for scienter. “[M]ere access” to
 8 unspecified information “even combined with allegations of a hands-on management style, is not
 9 enough to show deliberate recklessness.” *Wet Seal*, 518 F. Supp. 2d at 1175; *Police Ret. Sys. of*
 10 *St. Louis v. Intuitive Surgical, Inc.*, 759 F.3d 1051, 1063 (9th Cir. 2014) (finding insufficient
 11 allegations about “[m]ere access to reports containing undisclosed sales data”); *Zucco*, 552 F.3d
 12 at 1000 (finding insufficient “allegations that senior management . . . closely reviewed the
 13 accounting numbers generated . . . each quarter []], and that top executives had several meetings
 14 in which they discussed quarterly inventory numbers”).

15 *Second*, while Plaintiffs allege Defendants “admitted” that material adverse trends began
 16 in July 2022, Defendants admitted no such thing. *Supra* § IV.A.3. Defendants disclosed on
 17 November 3, 2022 that Free-to-Paid Conversion slowdowns had grown “more pronounced”
 18 through the first quarter of fiscal year 2023, and Atlassian *started* to see a slowdown in Existing
 19 Paid User Expansion in ***the second half*** of the first quarter. Ex. F at 2, 11. All of the challenged
 20 statements about what Atlassian was seeing in Existing Paid User Expansion were made in or
 21 before the first half of the first quarter, before Atlassian began seeing a slowdown in this metric.
 22 And Ms. Bharadwaj’s statement in the second half of the first quarter did not make any
 23 representation about trends in Existing Paid User Expansion, but rather warned investors that it
 24 would be an important metric to watch given the macroeconomic environment.

25 *Third*, Plaintiffs conclude that because Atlassian’s sales cycle had historically been
 26 “linear,” Defendants must have been “immediately aware of negative trends in the business.”
 27 ¶ 104. Such a conclusion is sheer speculation, supported by no alleged facts establishing that any
 28

1 Defendant actually saw any departure from the line at the time of the challenged statements in
 2 early August. *Supra* § IV.A.

3 Plaintiffs' Invocation of the "Core Operations" Theory Carries No Weight. Plaintiffs
 4 invoke a "core operations" theory of scienter based on the general allegation that because "90%
 5 of the Company's revenue in any given year comes from existing customers," Defendants must
 6 have been aware of "Atlassian's core business." ¶ 108. Pleading scienter based on core
 7 operations is "not easy" and is only appropriate in "rare circumstances," such as where a plaintiff
 8 alleges "witness accounts demonstrating that executives had actual involvement in creating false
 9 reports." *Welgus*, 2017 WL 6466264, at *19 (rejecting core-operations theory where defendant
 10 derived 83% of revenue from one product). Such rare circumstances are not alleged and do not
 11 exist here. Plaintiffs do not offer the necessary detailed allegations showing that any Defendant
 12 had exposure to any specific facts establishing that the macroeconomic environment would have
 13 a negative impact on Atlassian's future guidance at the time of any challenged statement.

14 Allegations "merely emphasizing the importance" of a business metric or product line to the
 15 company do "not show that the core operations theory applies." *See, e.g., Pardi v. Tricida, Inc.*,
 16 2022 WL 3018144, at *15 (N.D. Cal. July 29, 2022) (citing cases); *In re AnaptysBio, Inc. Sec.*
 17 *Litig.*, 2021 WL 4267413, at *14 (S.D. Cal. Sept. 20, 2021) (rejecting core operations theory
 18 based on importance of company's product).

19 Analyst Opinions Do Not Support Scienter. Plaintiffs point to analyst reports and
 20 questions expressing interest in macroeconomic impacts and later reports of disappointment in
 21 Atlassian's reduced fiscal year 2023 guidance as support for scienter. ¶¶ 105-107. But the
 22 opinions of third-party analysts about Atlassian's financial guidance has nothing to do with any
 23 defendant's state of mind and cannot support scienter. *See Wet Seal*, 518 F. Supp. 2d at 1172-73
 24 (rejecting scienter based on reported statements made by analysts); *Campo v. Sears Holding*
 25 *Corp.*, 371 F. App'x 212, 215 (2d Cir. 2010) (no scienter based on journalist opinion).

26 A Purported Item 303 (or Item 5) Violation Does Not Support Scienter. Plaintiffs point
 27 to Atlassian's alleged violation of Item 303 to support an inference of scienter. ¶ 109. Not only
 28 is the Complaint devoid of any alleged Item 303 violation as explained above (§ IV.A.2), "[t]he

1 majority of circuits have clearly held that standing alone, allegations of violations of GAAP or
 2 SEC regulations do not establish scienter.” *In re Cornerstone Propane Partners, L.P. Sec. Litig.*,
 3 355 F. Supp. 2d 1069, 1091 (N.D. Cal. 2005); *see also In re Downey Sec. Litig.*, 2009 WL
 4 2767670, at *11-12 (N.D. Cal. Aug. 21, 2009) (violations of SEC reporting rules, “even
 5 significant ones requiring large or multiple restatements” are insufficient to plead scienter).

6 **3. The Non-Fraudulent Inference Is More Compelling**

7 Plaintiffs urge the Court to conclude Defendants engaged in a scheme to conceal slowing
 8 growth to artificially inflate revenues for no reason, but the alleged facts do not support that
 9 conclusion. The far more plausible and compelling inference is that Defendants believed in the
 10 continued growth of their products, and despite not seeing any discernible material adverse
 11 trends from macroeconomic headwinds at the time of the challenged statements, specifically
 12 warned investors that Atlassian was not immune to the potential impact of an uncertain economic
 13 environment. And, as soon as those macroeconomic forces began to have an impact, Atlassian
 14 disclosed them and responsibly reset investor expectations for the future in its next scheduled
 15 quarterly filing. These facts support an inference of responsible communications with investors
 16 in uncertain economic times, not fraud. *See In re Alteryx, Inc. Sec. Litig.*, 2021 WL 4551201, at
 17 *10 (C.D. Cal. June 17, 2021) (holding plaintiff failed to plead scienter where “more plausible
 18 alternative explanation for the events detailed in the [complaint]” is that defendants’ decision to
 19 “pull [forward-looking] fiscal year guidance” in the midst of uncertain economic circumstances
 20 “is more indicative of a business responding to uncertainty”); *see also In re Pivotal Sec. Litig.*,
 21 2020 WL 4193384, at *17 (N.D. Cal. July 21, 2020) (“honest optimism followed by
 22 disappointment is not the same as lying or misleading”).

23 **C. Plaintiffs Fail to State a Section 20(a) Claim**

24 Plaintiffs do not plead a Section 10(b) claim, so their Section 20(a) claim fails. *See*
 25 *Lipton*, 284 F.3d at 1035 n.15.

26 **V. CONCLUSION**

27 Defendants respectfully request that the Court grant Defendants’ Motion to Dismiss.

28

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Respectfully submitted,

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